

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

In the Matter of Arbitration Between:

SWIFT SPLASH LTD., LIBERIA,

Petitioner,

**10 CV 6448 (JGK)**

- against -

THE RICE CORPORATION, d/b/a

THE RICE COMPANY INC.

Respondent.

-----X

**DECLARATION OF WAYNE A. PARKER, ESQ. IN SUPPORT OF  
MOTION TO CONFIRM AN ORDER TO SHOW CAUSE FOR ATTACHMENT  
IN AID OF ARBITRATION**

WAYNE A. PARKER declares as follows:

1. I am an attorney at Chalos, O'Connor & Duffy LLP, attorneys for petitioner Swift Splash Ltd., Liberia ("Swift Splash"). I submit this declaration in support of Swift Splash's Motion to Confirm an Order to Show Cause for Attachment in Aid of Arbitration (the "Motion to Confirm") seeking the Court's confirmation of its Order to Show Cause (the "Order", attached hereto as Exhibit A) dated August 30, 2010.

2. The Order authorized the attachment of property belonging to the Respondent, The Rice Corporation, d/b/a The Rice Company ("Respondent") in aid of an arbitration pursuant to CPLR Section 7502(c), and authorized the garnishees named therein to restrain and enjoin any transfer of any assets in their possession pending hearing and determination of Petitioner's Petition for an Order to Show Cause for an Attachment in Aid of Arbitration (the "Petition").

3. Petitioner served Respondent with a copy of the Petition, the Order and supporting papers via overnight courier on September 1, 2010. *See* Affidavit of Service

on The Rice Corporation by Wayne A. Parker, dated September 7, 2010 (attached as Exhibit B hereto).

4. Pursuant to the Order, copies of the Petition, the Order and supporting papers were served by hand on the garnishees, HSBC Bank USA, N.A. ("HSBC Bank") and Wells Fargo Bank, N.A. ("Wells Fargo"), on September 1, 2010. *See* Affidavit of Service on HSBC Bank by Afnan Altaf, dated September 1, 2010 (attached as Exhibit C hereto) and Affidavit of Service on Wells Fargo by Afnan Altaf, dated September 1, 2010 (attached as Exhibit D hereto). Service on the Respondent's counsel was also affected by hand on September 1, 2010. *See* Affidavit of Service on Hill Rivkins LLP by Afnan Altaf, dated September 1, 2010 (attached as Exhibit E hereto).

5. On the afternoon of September 1, I received a telephone call from Mr. John P. Cyna, a representative with HSBC Bank's Legal Department. Mr. Cyna asked several questions regarding the Order and requested a copy of the signature page thereto as he said he didn't receive one to the copy of the Order he received. After I sent him a PDF copy of the executed signature page to the Order via e-mail, he telephoned again and noted that his review of the records revealed no indication that any account was currently held under either the name The Rice Corporation or the The Rice Company. When the undersigned expressed concern about the possibility of funds being hidden by Respondent, Mr. Cyna suggested that the account might be under another name. He further recommended that I forward him Respondent's Federal Employment Identification Number ("FEIN") to aid in his search efforts to confirm whether any accounts were held at HSBC Bank on their behalf. Later that day, I sent Mr. Cyna the requested info based on the FEIN cited in a tax return filed on behalf of the Respondent.

*See* E-mail from Wayne A. Parker to John Cyna dated September 1, 2010, attached hereto as Exhibit F.

6. The next day I e-mailed and then telephoned HSBC Bank to confirm if they had confirmed whether any accounts under the relevant FEIN were maintained at that branch. Ms. Lynn Hughes, another HSBC Bank representative, confirmed during the course of the telephone call that she had in fact located an account under the name, “Rice Special Escrow Account” under Respondent’s FEIN. Ms. Hughes’s assistant, Ms. Kristie Sywak, subsequently re-confirmed that information via a letter (“Notification Letter”, attached hereto as Exhibit G) dated September 2, 2010.

7. The Notification Letter confirmed not only the existence of a savings account under Respondent’s FEIN, but states that the amount of the account is \$7,323,698.03. The undersigned subsequently communicated to HSBC Bank by e-mail to Mr. Cyna on September 7, 2010, that it should only restrain funds in the amount authorized by the Order, i.e. \$4,726,848.99. *See* E-mail from Wayne A. Parker to John Cyna dated September 7, 2010, attached hereto as Exhibit H.

#### **RESPONDENT’S ATTEMPT TO HIDE FUNDS SOUGHT TO BE ATTACHED**

8. The funds sought to be attached are held in a HSBC Bank account under the Respondent’s name and FEIN number. That account currently has a balance of approximately \$7,323,698.03, and is located with the HSBC Bank branch located at 26 Broadway, New York, New York 10004.

9. As is very clear from the conversations described in paragraphs 5-6 above, the Respondent has engaged in a blatant and obvious attempt to hide funds within the

district under a false name so that creditors, including those creditors seeking to enforce arbitral awards or judgments, cannot collect amounts owed by the Respondent.

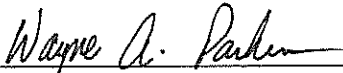
10. Swift Splash is concerned that the Respondent has ample opportunities for secreting, hiding or transferring funds in an attempt to frustrate any award issued by the London arbitral panel. As described in detail in a report prepared for Petitioner's parent company, the Respondent maintains a European headquarters under the name of The Rice Company (Nederland) BV ("TRCNB"), with an office in Rotterdam, The Netherlands. *See* Report Prepared for Grace Line Ltd. dated April 6, 2009, pg. 4, attached hereto as Exhibit I.

11. That report also notes that the Respondent and TRCNB share the same controlling shareholder, Mr. Jeetender Kumar Kapila. *See id.* Moreover, the Respondent and Mr. Kapila, own controlling shares or interest in other business entities formed and existing under the laws of other European nations with offices and bank accounts in Europe. *See id.* at pp. 6-8.

12. Swift Splash is confident that it will prevail in the ongoing arbitration proceedings in London. It also remains concerned that when it receives a favorable award from the London Maritime Arbitration Association arbitral panel, Respondent will attempt to negate the effect of that award by secreting funds in various jurisdictions outside the United States. Swift Splash has been involved in seven (7) Supplemental Rule B proceedings before this Court arising from prior breaches of other charter agreements. Swift Splash therefore brings its Motion to Confirm before this Court requesting confirmation of the original Order to Show Cause for Attachment so that any award by the LMAA arbitral panel to which it is entitled will not be rendered ineffectual.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 7, 2010

  
Wayne A. Parker

## **Exhibit A**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
SWIFT SPLASH LTD.,

Petitioner,

10 CV \_\_\_\_\_

- against -

**ORDER TO SHOW CAUSE**

THE RICE CORPORATION, d/b/a  
THE RICE COMPANY INC.

Respondent.

-----X

Upon the annexed Declaration of Peter Metz, dated August 30, 2010, the Declaration of Wayne Parker, dated August 30, 2010, the Memorandum of Law in Support, dated August 30, 2010, and upon the Petition for an Order to Show Cause for an Attachment in Aid of Arbitration, and for good cause shown it is:

ORDERED, that Respondent show cause in Courtroom 12B of the United States Courthouse, 500 Pearl Street, New York, New York, on the 9<sup>th</sup> day of September, 2010, at 4<sup>30</sup> ~~a.m.~~ p.m., or as soon thereafter as counsel may be heard, why an order should not be made, pursuant to Rule 64 of the Federal Rules of Civil Procedure, and Articles 62 and 75 of the New York Civil Practice Law and Rules, that the United States Marshal for the Southern District of New York or any person appointed to act in its place and stead shall levy within this Court's jurisdiction upon such monies, property and/or interest in property of Respondent, The Rice Corporation, d/b/a The Rice Company (hereinafter "TRC"), to the amount of \$4,726,848.99, as are on deposit with or held by HSBC Bank, N.A. and Wells Fargo (hereinafter and collectively "garnishees"), including, but not limited to the funds held in a savings account at HSBC Bank, N.A. and a business checking account at Wells Fargo, and that said garnishees shall not transfer any such assets pending further order of this Court; and it is further

ORDERED, that the following persons shall act in the place and stead of the U.S. Marshal for the purpose of serving this Order and effecting the levy ordered hereby: Brian T. McCarthy, Esq. and Wayne A. Parker, Esq., attorneys for Petitioner, and any attorney or employee of the law firm of Chalos, O'Connor & Duffy LLP.

ORDERED, that Petitioner shall post a bond in the amount of ~~\$10,000~~ <sup>\$50,000</sup>, as security, within ten (10) business days of this Order; and it is further

ORDERED, that pending the hearing and determination of this application, garnishees that are in possession of property in which Respondent has an interest or owning debts to Respondent are enjoined and restrained from transferring any such assets; and it is further

ORDERED, that service of a copy of this Order and of the papers upon which it is granted by overnight courier upon Respondent at its office at:

**The Rice Corporation d/b/a  
The Rice Company**  
3721 Douglas Blvd., Suite 375  
Roseville, CA 95661

and, by hand, upon Respondent's Attorney and Agent for Service of Process in New York:

**Hill Rivkins & Hayden LLP**  
45 Broadway, Suite 1500  
New York, New York 10006

no later than two (2) business days after the date hereof shall be deemed sufficient service; and it is further

ORDERED, that service of a copy of this Order upon garnishees by hand shall be deemed sufficient service; and it is further

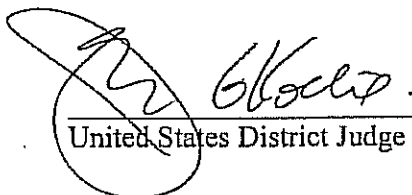


ORDERED, that the statement required by C.P.L.R. 6219 shall be served upon the garnishees, within five (5) days after service of this Order; and it is further


ORDERED that Respondent shall serve papers in opposition to the motion brought by this Order to Show Cause so as to be received by Petitioner's Attorneys, Chalos, O'Connor & Duffy LLP, 366 Main Street, Port Washington, New York 11050, no later than 5:00 pm on September 7, 2010; and it is further

ORDERED, that Petitioner's attorneys shall serve reply papers in support of this motion so as to be received by Respondent's attorneys no later than 5:00 pm on September 8, 2010.

SO ORDERED.

  
United States District Judge

Dated: New York, New York  
August 30, 2010

 6<sup>30</sup> P.M.

## **Exhibit B**

**AFFIDAVIT OF SERVICE**

STATE OF NEW YORK       )  
  ) ss.:  
COUNTY OF NASSAU       )

Wayne A. Parker, being duly sworn, deposes and says:

1. That he is an employee at **CHALOS, O'CONNOR & DUFFY** attorneys herein.
2. That deponent is not a party to the action or proceeding, is over eighteen (18) years of age, and works in Port Washington, New York.

3. That on **August 31, 2010** he served a copy of the within:  
**SUMMONS, PETITION FOR AN ORDER TO SHOW CAUSE FOR AN ATTACHMENT IN AID OF ARBITRATION, RULE 7.1 STATEMENT, ORDER TO SHOW CAUSE, DECLARATION OF PETER METZ IN SUPPORT OF PETITION FOR AN ORDER OF ATTACHMENT IN AID OF ARBITRATION, DECLARATION OF WAYNE A. PARKER, ESQ. IN SUPPORT OF PETITION FOR AN ORDER TO SHOW CAUSE FOR AN ATTACHMENT IN AID OF ARBITRATION and MEMORANDUM OF LAW IN SUPPORT OF PETITION FOR AN ORDER TO SHOW CAUSE FOR AN ATTACHMENT IN AID OF ARBITRATION on:**


The Rice Corporation  
d/b/a The Rice Company  
3721 Douglas Blvd.  
Roseville, CA 95561

Via FedEx overnight courier to the address above.


**Affirmation**

The undersigned, Afnan Altaf, an employee of attorneys for plaintiff, SWIFT SPLASH, LTD., affirms that the foregoing statement is true, under penalty of perjury.

Dated: September 7, 2010

  
Wayne A. Parker, Esq.  
CHALOS, O'CONNOR & DUFFY  
Attorneys for Plaintiff  
366 Main Street  
Port Washington, New York 11050  
Tel: 516-767-3600  
Our File: 500211.0025

Sworn to before me on this 7th day  
of September, 2010

  
Bobby Chu  
Notary Public, State of New York

**BOBBY CHU**  
**NOTARY PUBLIC-STATE OF NEW YORK**  
No. 01CH6216666  
Qualified in Kings County  
My Commission Expires January 25, 2014

**Wayne A. Parker**

---

**From:** TrackingUpdates@fedex.com  
**Sent:** Tuesday, August 31, 2010 2:37 PM  
**To:** Wayne A. Parker  
**Subject:** FedEx Shipment Notification

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This tracking update has been requested by:

Company Name: CHALOS, OCONNOR & DUFFY, LLP  
Name: BRIAN T. MCCARTHY  
E-mail: wparker@codus-law.com

---

BRIAN T. MCCARTHY of CHALOS, OCONNOR & DUFFY, LLP sent THE RICE COMPANY of THE RICE CORPORATION 1 FedEx First Overnight package(s).

This shipment is scheduled to be sent on 08/31/2010

Reference information includes:

Reference: 500211.0025  
Special handling/Services: Deliver Weekday  
  
Status: Shipment information sent to FedEx  
  
Tracking number: 793870281910

To track the latest status of your shipment, click on the tracking number above, or visit us at [fedex.com](http://fedex.com).

To learn more about FedEx Express, please visit our website at [fedex.com](http://fedex.com).

This tracking update has been sent to you by FedEx on the behalf of the Requestor noted above. FedEx does not validate the authenticity of the requestor and does not validate, guarantee or warrant the authenticity of the request, the requestor's message, or the accuracy of this tracking update. For tracking results and fedex.com's terms of use, go to [fedex.com](http://fedex.com).

Thank you for your business.

8/31/2010

**Wayne A. Parker**

**From:** TrackingUpdates@fedex.com  
**Sent:** Wednesday, September 01, 2010 10:39 AM  
**To:** Wayne A. Parker  
**Subject:** FedEx Shipment 793870281910 Delivered

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This tracking update has been requested by:

Company Name: CHALOS, OCONNOR & DUFFY, LLP  
Name: BRIAN T. MCCARTHY  
E-mail: wparker@codus-law.com

---

Our records indicate that the following shipment has been delivered:

Reference: 500211.0025  
Ship (P/U) date: Aug 31, 2010  
Delivery date: Sep 1, 2010 7:33 AM  
Sign for by: P.RAOW  
Delivery location: ROCKLIN, CA  
Delivered to: Receptionist/Front Desk  
Service type: FedEx First Overnight  
Packaging type: FedEx Pak  
Number of pieces: 1  
Weight: 2.00 lb.  
Special handling/Services: Deliver Weekday

Tracking number: 793870281910

Shipper Information	Recipient Information
BRIAN T. MCCARTHY	THE RICE COMPANY
CHALOS, OCONNOR & DUFFY, LLP	THE RICE CORPORATION
366 MAIN STREET	3721 DOUGLAS BLVD STE 375
PORT WASHINGTON	ROSEVILLE
NY	CA
US	US
11050	95661

Please do not respond to this message. This email was sent from an unattended mailbox. This report was generated at approximately 9:39 AM CDT on 09/01/2010.

To learn more about FedEx Express, please visit our website at [fedex.com](http://fedex.com).

All weights are estimated.

To track the latest status of your shipment, click on the tracking number above, or visit us at [fedex.com](http://fedex.com).

This tracking update has been sent to you by FedEx on the behalf of the Requestor noted above. FedEx does not validate the authenticity of the requestor and does not validate, guarantee or warrant the authenticity of the request, the requestor's message, or the accuracy of this tracking update. For tracking results and fedex.com's terms of use, go to [fedex.com](http://fedex.com).

Thank you for your business.

9/1/2010

## **Exhibit C**

**AFFIDAVIT OF SERVICE**

STATE OF NEW YORK       )  
  ) ss.:  
COUNTY OF NASSAU       )

Afnan Altaf, being duly sworn, deposes and says:

1. That he is an employee at **CHALOS, O'CONNOR & DUFFY** attorneys herein.
2. That deponent is not a party to the action or proceeding, is over eighteen (18) years of age, and works in Port Washington, New York.
3. That on **August 31, 2010** he served a copy of the within:  
**SUMMONS, PETITION FOR AN ORDER TO SHOW CAUSE FOR AN ATTACHMENT IN AID OF ARBITRATION, RULE 7.1 STATEMENT, ORDER TO SHOW CAUSE, DECLARATION OF PETER METZ IN SUPPORT OF PETITION FOR AN ORDER OF ATTACHMENT IN AID OF ARBITRATION, DECLARATION OF WAYNE A. PARKER, ESQ. IN SUPPORT OF PETITION FOR AN ORDER TO SHOW CAUSE FOR AN ATTACHMENT IN AID OF ARBITRATION and MEMORANDUM OF LAW IN SUPPORT OF PETITION FOR AN ORDER TO SHOW CAUSE FOR AN ATTACHMENT IN AID OF ARBITRATION** on:

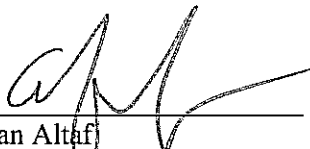
Devika Burahee  
HSBC Bank  
452 5th Avenue  
New York, NY 10018  
**At 2:10pm**

by hand delivering a true copy to her, an Indian Female between the ages of 30 and 35, approximately 5'4, weighing approximately 160 pounds.

**Affirmation**

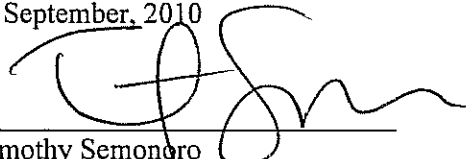
The undersigned, Afnan Altaf, an employee of attorneys for plaintiff, SWIFT SPLASH, LTD., affirms that the foregoing statement is true, under penalty of perjury.

Dated: September 1, 2010



Afnan Altaf  
CHALOS, O'CONNOR & DUFFY  
Attorneys for Plaintiff  
366 Main Street  
Port Washington, New York 11050  
Tel: 516-767-3600  
Our File: 500211.0025

Sworn to before me on this 1<sup>st</sup> day  
of September, 2010



Timothy Semonoro  
Notary Public, State of New York  
TIMOTHY SEMENORO  
NOTARY PUBLIC, STATE OF NEW YORK  
NO. 02SE6112804  
QUALIFIED IN NASSAU COUNTY  
COMMISSION EXPIRES JULY 12, 20 12

## **Exhibit D**



**AFFIDAVIT OF SERVICE**

STATE OF NEW YORK       )  
  ) ss.:  
COUNTY OF NASSAU       )

Afnan Altaf, being duly sworn, deposes and says:

1. That he is an employee at **CHALOS, O'CONNOR & DUFFY** attorneys herein.
2. That deponent is not a party to the action or proceeding, is over eighteen (18) years of age, and works in Port Washington, New York.
3. That on **August 31, 2010** he served a copy of the within:  
**SUMMONS, PETITION FOR AN ORDER TO SHOW CAUSE FOR AN ATTACHMENT IN AID OF ARBITRATION, RULE 7.1 STATEMENT, ORDER TO SHOW CAUSE, DECLARATION OF PETER METZ IN SUPPORT OF PETITION FOR AN ORDER OF ATTACHMENT IN AID OF ARBITRATION, DECLARATION OF WAYNE A. PARKER, ESQ. IN SUPPORT OF PETITION FOR AN ORDER TO SHOW CAUSE FOR AN ATTACHMENT IN AID OF ARBITRATION and MEMORANDUM OF LAW IN SUPPORT OF PETITION FOR AN ORDER TO SHOW CAUSE FOR AN ATTACHMENT IN AID OF ARBITRATION** on:

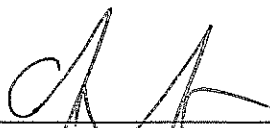
Tim White  
Wells Fargo  
12 E 49th St  
New York, NY 10022  
**At 2:35pm**

by hand delivering a true copy to him, a Black male between the ages of 30 and 35, approximately 5'8, weighing approximately 160 pounds.

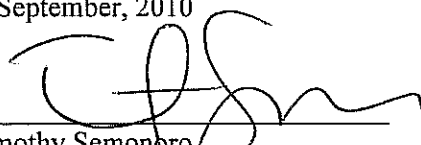
**Affirmation**

The undersigned, Afnan Altaf, an employee of attorneys for plaintiff, SWIFT SPLASH, LTD., affirms that the foregoing statement is true, under penalty of perjury.

Dated: September 1, 2010

  
\_\_\_\_\_  
Afnan Altaf  
CHALOS, O'CONNOR & DUFFY  
Attorneys for Plaintiff  
366 Main Street  
Port Washington, New York 11050  
Tel: 516-767-3600  
Our File: 500211.0025

Sworn to before me on this 1<sup>st</sup> day  
of September, 2010

  
\_\_\_\_\_  
Timothy Semonoro  
Notary Public, State of New York  
TIMOTHY SEMENORO  
NOTARY PUBLIC, STATE OF NEW YORK  
NO. 02SE6112804  
QUALIFIED IN NASSAU COUNTY  
COMMISSION EXPIRES JULY 12, 2012

## **Exhibit E**

**AFFIDAVIT OF SERVICE**

STATE OF NEW YORK       )  
  ) ss.:  
COUNTY OF NASSAU       )

Afnan Altaf, being duly sworn, deposes and says:

1. That he is an employee at **CHALOS, O'CONNOR & DUFFY** attorneys herein.
2. That deponent is not a party to the action or proceeding, is over eighteen (18) years of age, and works in Port Washington, New York.
3. That on **September 1, 2010** he served a copy of the within:  
**SUMMONS, PETITION FOR AN ORDER TO SHOW CAUSE FOR AN ATTACHMENT IN AID OF ARBITRATION, RULE 7.1 STATEMENT, ORDER TO SHOW CAUSE, DECLARATION OF PETER METZ IN SUPPORT OF PETITION FOR AN ORDER OF ATTACHMENT IN AID OF ARBITRATION, DECLARATION OF WAYNE A. PARKER, ESQ. IN SUPPORT OF PETITION FOR AN ORDER TO SHOW CAUSE FOR AN ATTACHMENT IN AID OF ARBITRATION and MEMORANDUM OF LAW IN SUPPORT OF PETITION FOR AN ORDER TO SHOW CAUSE FOR AN ATTACHMENT IN AID OF ARBITRATION on:**

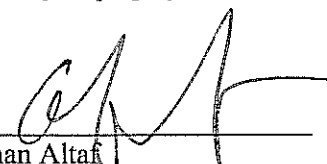
John Eric Olson  
Hill Rivkins & Hayden LLP  
45 Broadway, Suite 1500  
New York, New York 10006  
**At 12:10pm**

by hand delivering a true copy to him, a white male, glasses, 6'2-6'3, around 55-60 years old and approximately 200 lbs.

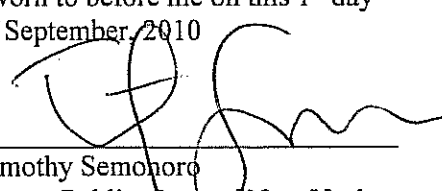
**Affirmation**

The undersigned, Afnan Altaf, an employee of attorneys for plaintiff, SWIFT SPLASH, LTD., affirms that the foregoing statement is true, under penalty of perjury.

Dated: September 1, 2010

  
\_\_\_\_\_  
Afnan Altaf  
CHALOS, O'CONNOR & DUFFY  
Attorneys for Plaintiff  
366 Main Street  
Port Washington, New York 11050  
Tel: 516-767-3600  
Our File: 500211.0025

Sworn to before me on this 1<sup>st</sup> day  
of September, 2010

  
\_\_\_\_\_  
Timothy Semonoro  
Notary Public, State of New York

**TIMOTHY SEMENORO**  
**NOTARY PUBLIC, STATE OF NEW YORK**  
NO. 02SE6112804  
QUALIFIED IN NASSAU COUNTY  
COMMISSION EXPIRES JULY 12, 2012

## **Exhibit F**

**Wayne A. Parker**

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**From:** Wayne A. Parker  
**Sent:** Wednesday, September 01, 2010 1:42 PM  
**To:** 'john.p.cyna@us.hsbc.com'  
**Cc:** Brian McCarthy  
**Subject:** RE: SWIFT SPLASH: Copy of Fully Executed Order to Show Cause

John,

Further to my earlier e-mail below, the FEIN for The Rice Corporation is 68-0319492.

Chalos, O'Connor & Duffy LLP  
366 Main Street  
Port Washington, NY 11050  
Tel: (516) 767-3600  
Fax: (516) 767-3605  
Mobile: (917) 405-4401

This e-mail is sent by a law firm and may contain information that is privileged or confidential. If you are not the intended recipient, please delete the e-mail and any attachments and notify us immediately.

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**From:** Wayne A. Parker  
**Sent:** Wednesday, September 01, 2010 10:23 AM  
**To:** 'john.p.cyna@us.hsbc.com'  
**Cc:** Brian McCarthy  
**Subject:** SWIFT SPLASH: Copy of Fully Executed Order to Show Cause

John,

Nice speaking with you earlier this morning. Attached is a fully executed and dated copy of the Order to Show Cause. I will send you the FEIN for The Rice Corporation as soon as I can get it from my client.

Chalos, O'Connor & Duffy LLP  
366 Main Street  
Port Washington, NY 11050  
Tel: (516) 767-3600  
Fax: (516) 767-3605  
Mobile: (917) 405-4401

This e-mail is sent by a law firm and may contain information that is privileged or confidential. If you are not the intended recipient, please delete the e-mail and any attachments and notify us immediately.

9/7/2010

## **Exhibit G**

RX Date/Time 09/02/2010 15:42 716 841 7651  
716-841-7651 HSBC Bank NA

04:17:17 p.m. 09-02-2010

P.002

2 / 2



September 2, 2010

Wayne A. Parker  
Chalos O'Connor & Duffy LLP  
366 Main Street  
Port Washington, NY 11050

Dear Ladies and Gentlemen:

Re: Swift Splash Ltd. v. The Rice Corporation dba The Rice Company Inc.  
Index No.: 10 CIV 6448

In response to the Order to Show Cause, please be advised that HSBC Bank USA, N.A. is currently restraining accounts described below. This will confirm your recent telephone conversation with Lynn Hughes where we acknowledged receipt of your order to Show Cause dated 8/30/10 against The Rice Corporation dba The Rice Company Inc. Lynn Hughes advised you that HSBC Bank USA, N.A. maintains an account in the name of Rice Special Escrow Account. You directed HSBC Bank USA, N.A. to restrain this account though it did not match The Rice Corporation dba The Rice Company Inc. The account has been restrained.

<u>Exact Name on Account</u>	<u>A/C Number</u>	<u>Type</u>	<u>Amount</u>
Rice Special Escrow Account	005514304	Savings	\$7,323,698.03

If we can be of further assistance, please contact us at (716) 841-7492.

Sincerely,

A handwritten signature in black ink, appearing to read "Kristie Sywak".

Kristie Sywak  
Legal Assistant  
Legal Processing Department

RX Date/Time 09/02/2010 15:42 716 841 7651

P.001

716-841-7651

HSBC Bank NA

04:17:09 p.m. 09-02-2010

1 / 2



FACSIMILE COVER SHEET

To: Wayne ParkerDate: 9/2/10

Fax No: \_\_\_\_\_

File Ref: \_\_\_\_\_

From: Aristie SwankTotal no. of pages = cover + 1Legal Paper Processing Department*If you do not receive all pages, please  
telephone or telex immediately.*Fax No: (716) 841-1392Telephone/Telex: (716) 841-7492Urgent: ☒ Yes ☐ No

Subject: \_\_\_\_\_

Confidential: ☒ Yes ☐ No

This facsimile is intended for the named recipient only and may contain privileged and confidential information. If you have received this facsimile in error, please notify us immediately.

Please do not disclose the contents to anyone or copy it to outside parties. Thank you.

Message: ▼



## **Exhibit H**

**Wayne A. Parker**

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**From:** kristie.a.sywak@us.hsbc.com  
**Sent:** Tuesday, September 07, 2010 10:45 AM  
**To:** Wayne A. Parker  
**Subject:** Fw: SWIFT SPLASH: Copy of Fully Executed Order to Show Cause



HSBC Bank  
Notification.pdf (56..

Good Morning,

Per your e-mail request below, we are only restraining \$4,726,848.99 for the court order.  
Thank you.

Kristie A Sywak  
Ops Rep/ Legal Processing | HSBC BANKUSA N.A.  
One HSBC Center , 12th  
Buffalo, NY 14203

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Phone. 716-841-7492  
Fax. 716-841-1397  
Email. kristie.a.sywak@us.hsbc.com.

----- Forwarded by Kristie A Sywak/HBUS/HSBC. on 09/07/2010 10:45 AM -----

**From:** John P Cyna/HBUS/HSBC@HSBC02  
**To:** Kristie A Sywak/HBUS/HSBC@HSBC  
**Date:** 09/07/2010 10:28 AM  
**Subject:** Fw: SWIFT SPLASH: Copy of Fully Executed Order to Show Cause

John Cyna  
Operations Representative  
Legal Paper Processing  
One HSBC Center  
12th Floor  
Buffalo, NY 14203  
Phone: (716) 841-2639  
Fax: (716) 841-7651

----- Forwarded by John P Cyna/HBUS/HSBC on 09/07/2010 10:28 AM -----

**From:** "Wayne A. Parker" <wparker@codus-law.com>  
**To:** John P Cyna/HBUS/HSBC@HSBC02  
**Cc:** "Brian McCarthy" <bmcCarthy@codus-law.com>  
**Date:** 09/07/2010 10:04 AM  
**Subject:** FW: SWIFT SPLASH: Copy of Fully Executed Order to Show Cause

John,

Further to our telephone discussion last week, I spoke with one of your colleagues, Ms. Lynn Hughes, who confirmed in the attached letter that HSBC had located a savings account listed under The Rice Corporation's FEIN and that the funds in that account had in fact been attached pursuant to the terms of the Order of Attachment. I write to inquire and confirm that the amount of the funds restrained is no more than the amount authorized by the Order, i.e. \$4,726,848.99. Please let me know via e-mail or other written communication that you have received this communication and that the amount of the funds restrained is no more than \$4,726,848.99.

Thank you.

Chalos, O'Connor & Duffy LLP  
366 Main Street  
Port Washington, NY 11050  
Tel: (516) 767-3600  
Fax: (516) 767-3605  
Mobile: (917) 405-4401

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From: Wayne A. Parker  
Sent: Wednesday, September 01, 2010 1:42 PM  
To: 'john.p.cyna@us.hsbc.com'  
Cc: Brian McCarthy  
Subject: RE: SWIFT SPLASH: Copy of Fully Executed Order to Show Cause

John,

Further to my earlier e-mail below, the FEIN for The Rice Corporation is 68-0319492..

Chalos, O'Connor & Duffy LLP  
366 Main Street  
Port Washington, NY 11050  
Tel: (516) 767-3600  
Fax: (516) 767-3605  
Mobile: (917) 405-4401

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From: Wayne A. Parker  
Sent: Wednesday, September 01, 2010 10:23 AM  
To: 'john.p.cyna@us.hsbc.com'  
Cc: Brian McCarthy  
Subject: SWIFT SPLASH: Copy of Fully Executed Order to Show Cause

John,

Nice speaking with you earlier this morning. Attached is a fully executed and dated copy of the Order to Show Cause. I will send you the FEIN for The Rice Corporation as soon as I can get it from my client.

Chalos, O'Connor & Duffy LLP  
366 Main Street  
Port Washington, NY 11050  
Tel: (516) 767-3600  
Fax: (516) 767-3605  
Mobile: (917) 405-4401

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## **Exhibit I**



**Report Prepared For:** Grace Line Ltd

**On behalf of:** Charles Cumming

**Your Ref:** Not given

**Our Ref:** GP01284

**Date of Report:** 6th April 2009

**Subject** The Rice Company  
a.k.a The Rice Corporation.

***Confidentiality Notice***

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The Rice Company a.k.a. The Rice Corporation



## INSTRUCTION

On the 23<sup>rd</sup> March 2009, Gray Page Intelligence Services Limited received an instruction from Grace Line Ltd of New York, to undertake an investigation to look into the current activities and financial condition of the California based charter operating company named The Rice Company.

We understand that this enquiry relates to a claim that has arisen during the charter of one of Grace Line's vessels to The Rice Company. Before proceeding to arbitration, Grace Line is seeking to identify whether the company remains a going concern and what possible avenues can be identified to secure a claim against The Rice Company.

## INVESTIGATION

The Rice Company, also widely known as The Rice Corporation, hereafter referred to as "TRC" is a California based charter operator and grain trader, which has been active since 1991. The company is known to be controlled by the Indian Kapila family, headed by Jeetender Kumar Kapila.

Checks of the California Secretary of State's Division of Corporations have identified that the official registration of TRC is under the name The Rice Corporation, and not "The Rice Company". We can therefore assume that the "The Rice Company" name is simply a recognised trading name.

TRC was registered in California as a foreign business corporation on the 14th April 1994, under registration number C1888197. The official place of registration is not California but the State of Delaware.

The California Corporate Register lists the registered address to be:



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3721 Douglas Boulevard,  
Suite 375,  
Roseville,  
CA, 95661

The agent for service of process is named as:

Adam Brown,  
11140 Fair Oak Boulevard, STE 100  
Fairoaks,  
CA, 95628

No further details are available from the corporate register other than confirmation that the company remains active on the register.

We have also checked the Delaware Secretary of State's Division of Corporations. This also has TRC registered as "The Rice Corporation". According to the Delaware Register TRC was incorporated on the 12<sup>th</sup> October 1993 under file number 2354654 as a domestic corporation. The registered agent in Delaware is listed as:

Delaware Business Incorporators Inc,  
3422 Old Capitol Trail Suite 700,  
Wilmington  
Newcastle,  
DE, 19808

Phone: +1 302 996 5819

As the Delaware Corporate Register operates under a policy of strict non-disclosure, this is all the information that is available on the company, from this source. No details such as the names of corporate officers or financial accounts are available for disclosure to third parties.





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TRC has no physical day-to-day operational presence within the State of Delaware. All physical management and operations roles are handled through the offices in Roseville California.

The full address and contact details for the head office of TRC are provided on its website ([www.riceco.com](http://www.riceco.com)). We note that this is the same address as the California Corporate Register holds for TRC:

3721 Douglas Blvd.  
Ste 375  
Roseville, CA 95661  
U.S.A.  
Phone: +1 916 784 7745  
Fax: +1 916 784 7681

Please note that TRC of Delaware has also registered itself in New York as a foreign business corporation. This registration took place on the 20<sup>th</sup> November 2008. This action is likely to have been taken to shield the company from any potential Rule B applications against the company. We shall discuss these later in this report.

TRC's registered agent and address of process in New York is listed to be:

Keith B Dalen Esq  
Hill Rivkins & Hayden LLP  
45 Broadway, Suite 1500  
New York, NY 10006

The New York Secretary of State, Division of Corporations, lists TRC to remain active. No further details are disclosed.



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**The Rice Company (Nederland) BV**

In addition to the North American companies, TRC also has a European headquarters operating under the name The Rice Company (Nederland) BV (hereafter referred to as 'TRCNB'). This company is addressed as follows:

Beursplein, 37, Office 403,  
P.O. Box 30047, World Trade Centre,  
3001 DA Rotterdam,  
The Netherlands

Phone: +31 10 205 3810

Fax: +31 10 205 3819

We have identified that TRCNB is registered as a Besloten Vennootschap, or private limited company. The company was first incorporated on the 8<sup>th</sup> June 2001 with the registered street and postal addresses:

Beursplein 37	Postbus 30047
Kamer 403	3001DA
3011AA	Rotterdam
Rotterdam	

TRCNB has an authorised share capital of EUR 90,000 of which EUR 18,000 has been issued and paid-up.

The sole shareholder is named as Jeetender Kumar Kapila, (Date of Birth, 21.10.1964, Place of birth: India). We note that this individual is perceived to be the owner of TRC in the United States.

TRCN's corporate officers are listed as:

Heimen Hendrikus van Dam	Director
Date of Birth:	11/11/1946



The Rice Company a.k.a. The Rice Corporation

Place of Birth: Capelle aan den IJssel, Netherlands

Vicki Christine Manzoli Director

Date of Birth: 18/12/1972

Place of Birth: California, USA

Xavier Marie Joseph Verseieren Director

Date of Birth: 02/04/1962

Place of Birth: Roubaix Nord, Frakrijk, Netherlands

We have also accessed corporate accounts for TRCNB. The latest figures are accounts for the year ending 31<sup>st</sup> December 2007, that were only filed on the 17<sup>th</sup> March 2009. We note that only balance sheet figures are included. The key details from these are tabled below.

Balance Sheet EUR	31 December 2007	31 December 2006
Fixed Assets	Nil	41,040
Current Assets	1,186,341	779,415
Current Liabilities	1,509,173	909,382
Long Term Liabilities	Nil	Nil
Shareholder Equity	(322,832)	(88,927)

These figures clearly show that TRCNB has no tangible assets in the Netherlands and that the company effectively acts as a representative office for the wider group. The negative equity figures clearly suggest that the company is not viewed as a profit centre for the group.

No further details are recorded in the accounts other than confirmation that the offices are rented. We note that the rent charges for year 2007 were EUR 12,132 per year. This suggests the office is fairly small.

Market sources indicate that TRCNB only employs around three staff members. TRCNB controls all the European trading activities for TRC. No chartering activities are controlled through this office, with any shipping requirements passed across to the US office.



The Rice Company a.k.a. The Rice Corporation

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**The Rice Company (Suisse) SA**

TRC also has a company registered in Switzerland. The Rice Company (Suisse) SA, hereafter referred to as "TRCS", was incorporated on the 28<sup>th</sup> June 2001, under registration number CH-660-1297001-0. The registered address is situated at:

Rue de Marche 7,  
c/o LKM Associates SarL,  
1204 Geneva.

LKM associates are business advisors that establish companies for clients without the requirement for the company to have a physical office or operational management presence in Switzerland. We are not certain at this stage if TRCS has any physical office presence in Switzerland.

TRCS has an issued share capital of CHF 100,000, split into 100 shares of CHF 1,000 each. No details of the names of shareholders are revealed by the Swiss register. However, the corporate officers are listed to be:

Kapila, Jeetender Kumar of Roseville, CA, USA	Administrative Director
--	-------------------------

Murray, Leo K. of Geneva	Director
-----------------------------	----------

Kapila, Mary Ann of Roseville, CA, USA	Individual Signatory
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Manzoli, Vicki Christine of Folsom, CA, USA	Joint Signatory
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Verspieren, Xavier Marie Joseph of Fair Oaks, CA, USA	Joint Signatory
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We note that three of these directors correlate with the directors of the Netherlands based TRCNB. No further details are available for TRCS from the register.

Our enquiries indicate that TRCS is used as a name within bills of lading for the TRC group's shipments. The name regularly appears as the shipper of grains or rice cargoes, particularly for containerised shipments into and out of the United States and Canada.

#### **TRC Krohn Gesellschaft fur Marketing & Logistik oHG**

The TRC group has had two companies registered in Germany, the first TRC- Khrohn Gessellschart fur Marketing & Logistik mbH was formed on the 11<sup>th</sup> February 2002. However, it was dissolved on the 7<sup>th</sup> November 2005. We understand that this company was originally purchased by TRC from the Louis Dreyfus group in 2003.

The very same day as the old German TRC group company was dissolved, a new general partnership was established named TRC Krohn Gesellschaft fur Marketing & Logistik oHG, hereafter referred to as TRCKG. The new business was registered under company number HRA 102884. It remains active on the German register, although no corporate filings have been recorded since its establishment. Given the partnership status of the business this is not unusual.

TRCKG operates from a registered address listed as:

Ballindamm 11,  
20095  
Hamburg  
Germany

The authorised representative is named as:

Burghard Jurgensen  
Date of Birth: 26/02/1945, Hamburg



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This partnership has two corporate partners. The first is named JKK1 LLC of Delaware, USA, with the other being TRC1 LLC of Delaware, USA. We would suggest further investigation into these two holding companies at a later stage if further investigation is deemed to be required.

### **The Rice Company Europe Limited**

The TRC group also had a representative office incorporated in the UK. This company, The Rice Company Europe Limited was incorporated on the 1<sup>st</sup> June 1999. However, this company was also dissolved on the 17<sup>th</sup> July 2007. Its last annual accounts and annual return were filed on the 1<sup>st</sup> June 2005.

The reason that we mention this UK registered company is that Jeetender Kumar Kapila, Vicki Christine Manzoli and Xavier Verspieren were all listed as directors of this company from 1999 through to the time the company was dissolved. This confirms our belief that these three individuals hold the overall management control of the entire TRC group, with Mr Kapila holding beneficial ownership.

The 2004 accounts show that The Rice Company Europe Limited activities were being wound up. However, despite losses in the final year, the company was shown to have settled all its liabilities.

The company was listed to be wholly owned by its American parent "The Rice Company Inc" This may suggest that the TRC group does have another corporate entity of this name registered in some other US state jurisdiction. However, we have not identified this entity during the course of these enquiries.

Given the dissolution of The Rice Company Europe Limited, we have not looked further into its activities.



The Rice Company a.k.a. The Rice Corporation

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## MARKET ENQUIRIES

TRC is known to be an active charterer of vessels for single trip charters to carry cargoes of grain, rice and other bulk cargoes. A source close to the company advised us that in 2008 around 100 vessels per year were being chartered by TRC. We were also advised that TRC had expanded its shipping activities significantly during 2008.

The majority of TRC's cargoes are shipped out of the US Gulf to destinations in the Mediterranean, or to the US East Coast or South America. TRC has also been increasing its amount of business out of Thailand back to the US. Within the spot market, we understand that the last vessel to be chartered in was the *Dominator* (1991-built, 22,174 dwt). This vessel undertook a trip charter from Recife to Venezuela. The owners advised us that TRC performed well during the charter, although a small outstanding amount remains unsettled.

In addition to this, a number of vessels are also understood to be chartered in on short period charter. In the past year we understand that the period charters have started to be undertaken under the name of a new affiliated company named "Helena Chartering". Four handysized vessels are understood to have been employed, although we have only identified one vessel that remains on charter, namely the *Opal Naree* (1982 built, 28,780 dwt). The owner of this vessel, Precious Shipping has not yet responded to our request for details about how long the ship will remain on charter. Further enquiries can be made if required.

We note that the same owner also had the *Suchada Naree* on charter to Helena Chartering Inc in December 2008. The vessel was subject to an early redelivery by the sub charterers STX Pan Ocean. TRC is claiming just over US\$400,000 in damages from STX as a result of this claim.

We believe that the Helena Chartering trade name may relate to a Delaware registered company named Helena Chartering Agency Inc, which was incorporated in Wilmington Delaware on the 10<sup>th</sup> February 2006, under file number 4108889.

Sources within the chartering market have advised us that freight and charter hire remittances in the name of TRC have recently been routed through accounts held in the name of "Helena



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Chartering". As with the various TRC trade names, we suspect TRC's management may choose to be loose with the defined company style in order to create some legal confusion as to what the true entity is.

We understand that Salil Chitre acts as the chartering manager for TRC, and that he is based in the California office. From our broking sources we have identified that TRC has its cargo enquiries quoted by a wide range of ship brokers including H. Vogemann in Germany and Thalassini Navegacao & Affretamentos Ltda in Brazil, North Harbor Inc in Connecticut and Logiship Services Inc in Houston. Our sources close to these brokers have advised us that there are no current enquiries in the market, although some Thailand business may come into the market shortly.

We have also spoken to bunkers suppliers known to have accounts established with TRC. One bunker trader advised that they entered into a year long fixed price supply contract with TRC. This is understood to have expired in January 2009. All payments were made in a timely fashion, and the supplier remained happy to continue to undertake further business.

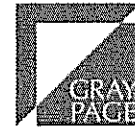
## **US COURT RECORDS**

TRC is clearly a company that is well known within the US Courts. The company has been involved in over 21 civil cases and a further 35 bankruptcy cases. As you are no doubt well aware of these cases we will not go into detail here. However, we do note that in 14 of the bankruptcy cases, filed between 2001 and 2009, TRC was the defendant in the action. This clearly suggests that the plaintiffs were experiencing problems in obtaining settlement from TRC. Nevertheless, we do note that these cases have been subsequently closed suggesting that matters are eventually settled.

We note that included within these plaintiffs are names such as MUR Shipping BV, Glory Wealth Shipping Services Ltd of the BVI, and Daeyang Shipping Co. Ltd of Korea.

A number of these cases relate to shipping derivatives trades, particularly the case against Glory Wealth and Daeyang. Both of these cases have been closed, with only two ongoing





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bankruptcy claims, both of which were brought by TRC against their counterparties. We note that one ongoing claim relates to water damage to a cargo loaded aboard the vessel *Naline* *Naree*. TRC is claiming against the vessel's owners. Given the ongoing relationship between Precious Shipping (the operators of this vessel) and TRC we suspect that a solution to this issue will be reached through the vessel's insurers in due course.

With regards to the civil cases, we note that all but one of the cases involving TRC has been closed. This one outstanding case was brought by TRC against the Grain Board of Iraq in 2006. No civil cases have been brought against TRC since 2003. However, given that TRC is now shielded from Rule B claims through its presence in New York, this is perhaps unsurprising. This may explain why the counterparties with claims against TRC are seeking redress through the bankruptcy courts.

Should you require further details about any cases involving TRC we shall happily provide further details in any further stage of enquiries.

## **BANKING ARRANGEMENTS.**

From our enquiries we have identified that TRC holds bank accounts with a number of different banks. Credit Agricole Indosuez in Geneva, Union Planters Bank, Miami, and MeesPierson Bank in Rotterdam are three names mentioned by ship owning sources in relation to bank remittances made by TRC.

We have also identified an account used for Forward Freight Agreement settlements, namely:

US Bank Commercial Banking  
ABA ~ 121122676  
Swift: USBKUS44IMT  
Account: #1-534-5315-4327  
Beneficiary: The Rice Company



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Helena Chartering has remitted charter hire payments through HSBC in New York. However, our source did advise that this may have been a corresponding bank. It should be stressed that this remittance by Helena Chartering was under a charter that named TRC as the charterer.

## CONCLUSION

Our investigation has identified that The Rice Corporation is a Delaware registered grain and rice trader that operates out of California. The company is controlled by its founder Jeetender Kumar Kapila.

TRC is known to remain active through its offices in California and in the Netherlands. However, TRC clearly has had a number of disputes relating to Forward Freight Agreement transactions, and suffered from some problems with regards to early redelivery of vessels due to the collapse of the freight market.

Despite these problems, TRC and its new chartering entity Helena Chartering do appear to remain active within the charter market. We therefore believe that while TRC itself is unlikely to hold any substantial tangible assets of its own, that it may be possible to obtain settlement of your claim by targeting funds held in bank accounts of both TRC and its chartering affiliate and effective "alter ego" and payment agent, Helena Chartering.

This concludes our findings within the agreed budget. There remain several avenues down which further enquiries can be made if further investigation is deemed necessary. Key amongst our recommendations for further work would be to undertake a land registry search on the property in Roseville California to identify if this is owned by the company, as well as undertaking further chartering enquiries.

We shall be happy to extend these enquiries if required.

- End report -